IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1493 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHMMAD HUSSAIN ABDULRAHIM KALOTA
Versus
STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 1493 of 2003
MR KB ANANDJIWALA for Appellant
MR ARUN D OZA, PUBLIC PROSECUTOR for Respondent

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 14/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE KSHITIJ R.VYAS)

The appellant - Mohmmad Hussain Abdulrahim Kalota, has challenged the judgment and order dated 30th October 2003 in Criminal Misc. Application No. 2577 of 2003 passed by the learned Special Judge (POTA), rejecting the prayer for bail.

2. We have heard Mr.Anandjiwala, learned Advocate appearing for the appellant as well as Mr.Arun D.Oza, learned Public Prosecutor. We have also perused the relevant statements of the witnesses.

3. Learned Advocate Mr.Anandjiwala submitted that as per the FIR, the incident in question had taken place between 7.47 a.m. and 8.20 a.m. By inviting our attention to the statement of one Nazmibhai, he submitted that the appellant, as the President of Municipality, was required to go to Gandhinagar to attend a meeting and for that purpose, Nazmibhai had gone to inform the appellant at 8.30 a.m. He, therefore, submitted that the appellant was at his residence and since the appellant is residing at a distance of 2 kms. away from the Railway Station, he could not have remained present at the Railway Station at the time of incident. By inviting our attention to the statement of Murlidhar Mulchandani, he submitted that though he had tried to involve the appellant, he described the appellant only as "Kalota". Learned Advocate, referring to the voters' list, submitted that there are many persons having the surname "Kalota" in Godhra Town and, therefore, the identity of the appellant is also doubtful. Criticising the evidence of Police officers, R.G.Parmar, PSI, Constable Mangalbhai Ramjibhai and unarmed Constable Somabhai Chandubhai, Mr.Anandjiwala submitted that their evidence is not required to be believed for the simple reason that the appellant being the President of Municipality was busy at that time, controlling the situation by making calls from his mobile to various agencies.

Learned Public Prosecutor Mr.Arun D.Oza, while opposing the appeal for bail, supported the judgment and order of the learned Special Judge, in toto.

4. Having minutely examined various statements to which our attention is invited, we are of the view that while deciding the application for bail, this Court will be at loathe to appreciate the statements whether the appellant was present at the time of incident or after the incident was over at the present juncture; they can

only be decided after evidence. There is no reason for us to doubt, at this stage, the statement of Murlidhar Mulchandani who has specifically involved the appellant as one of the members of the mob, who attacked S-2 Coach of Sabarmati Express with deadly weapons. Identifying appellant only as "Kalota" is sufficient or not to which we express no opinion at this stage and leave it to trial Court to decide at the time of trial. Similarly, PSI RG Parmar and his staff who reached the Railway under-bridge, saw the appellant with other persons instigating the crowd and to attack the train by throwing stones. The above statements prima facie involve the appellant as one of the participants of the alleged offence. As stated above, at this stage, it is too early for us to appreciate the staatements made by witnesses. The statement showing the incoming and outgoing calls from the mobile of the appellant shows that all the calls were made after 8.32 a.m. before which the incident was over. Making mobile calls in the capacity of the President of the Municipality whether after or prior to the incident is a matter to be appreciated in the trial; therefore also it is not appropriate to express any opinion at this stage.

5. Taking the overall view of the matter, we are of the opinion that no case is made out by the appellant for bail. Suffice it to say that we are in total agreement with the reasoning and the ultimate conclusion reached by the learned Special Judge (POTA). There being no substance in the appeal, it is dismissed.

(Kshitij R. Vyas, J.)

(Akshay H. Mehta, J.)

Sreeram.